MAY 25 1971 Nos. ~~1184 and 1221~~ SUPREME COURT, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1184~~ 70-63

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79, Operative Plasterer's and Cement Mason's International Association, AFL-CIO, et al.,

Respondent.

No. ~~1221~~ 70-65

TEXAS STATE TILE & TERRAZZO COMPANY, INC.,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79, Operative Plasterer's and Cement Mason's International Association, AFL-CIO, et al.,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF SCIENTIFIC APPARATUS MAKERS ASSOCIATION AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1184

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79, Operative Plasterer's and Cement Mason's International Association, AFL-CIO, et al.,

Respondent.

No. 1231

TEXAS STATE TILE & TERRAZZO COMPANY, INC.,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79, Operative Plasterer's and Cement Mason's International Association, AFL-CIO, et al.,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Scientific Apparatus Makers Association, by its attorneys Edward H. Hatton, Chester T. Kamin, and Jenner & Block, moves for the entry of an order granting leave to file a brief *amicus curiae* in the above-captioned case.

Interest of the Amicus

Scientific Apparatus Makers Association has as members the major national manufacturers of scientific laboratory furniture and equipment. Installation of scientific facilities has been repeatedly interrupted by jurisdictional disputes in which members of the *amicus* have sought and obtained redress through the National Labor Relations Board.

The decision of this case is of compelling interest to the *amicus* because if the opinion of the Court of Appeals is sustained the ability of members of the *amicus* to end disputes and to do business with dispatch and at reasonable cost will be seriously abridged.

Reasons For Filing A Brief Amicus Curiae

Consents to the filing of a brief *amicus curiae* on behalf of Scientific Apparatus Makers Association have been given by the Solicitor General and two of the three private parties. These consents are attached as Exhibits A, B, and C to this motion. Respondent Plasterers' Union Local 79 has refused consent. A copy of its letter of refusal is attached as Exhibit D.

Scientific Apparatus Makers Association believes that its brief will shed light on certain economic realities in the construction industry and on the actual operation and conduct of the National Joint Board for the Settlement of Jurisdictional Disputes. These insights may be of assistance to the Court in reviewing the conclusion of the Court of Appeals that the employer has no interest in the outcome of a jurisdictional dispute and that the National Joint Board affords a workable tribunal for the voluntary resolution of jurisdictional disputes.

Respectfully submitted,

.....

ALBERT E. JENNER, JR.
One of the Attorneys for Scientific Apparatus Makers Association

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In the Supreme Court of the United States

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Respondent.

BRIEF OF SCIENTIFIC APPARATUS MAKERS ASSOCIATION AS AMICUS CURIAE

Interest of the Amicus

Scientific Apparatus Makers Association has as members the major national manufacturers of scientific laboratory furniture and equipment. Over the past several years, members of the *amicus* have supplied and installed comprehensive scientific laboratories on hundreds of college and university campuses. Installation of these and other vital scientific facilities has been repeatedly interrupted by jurisdictional disputes.

No member of the *amicus* has agreed to be bound by decisions of the National Joint Board for the Settlement of Jurisdictional Disputes ("Joint Board"). Members of the *amicus* have recurrently relied on the intervention of the National Labor Relations Board ("NLRB") to obtain injunctions against work stoppages and subsequently to resolve the merits of the dispute. The decision of this case is of compelling interest to the *amicus* because if the opinion of the Court of Appeals is sustained the ability of its members to end disputes and to do business with dispatch and at reasonable cost will be seriously abridged.

ARGUMENT

I.

MANY EMPLOYERS HAVE AN INTENSE, PRACTICAL INTEREST IN THE OUTCOME OF JURISDICTIONAL DISPUTES.

The central conclusion of the Court of Appeals that the employer has no interest in jurisdictional disputes is at odds with reality.

In the scientific furniture industry, the employer typically contracts to supply and install its products. The installation is performed by specially trained carpenters who usually are regular employees dispatched to the construction site. The employers are parties to collective bargaining agreements with the carpenters union.

A jurisdictional dispute in this industry typically involves a challenge by another trade employed by a *different subcontractor*. If the competing trade successfully presses its claim, the employer suffers these consequences: 1) the flow of work planned for his employees is interrupted; 2) his regular employees may have to be temporarily laid off; 3) the inferior workmanship of the competing tradesmen must be corrected at his expense; 4) duplicate supervision is required because the competing trade insists on the presence of a supervisor who is associated with that trade and the employer cannot take the risk of removing his own supervisor; and 5) job satisfaction on the part of the architect and owner is impaired.

Whatever may be the case where both trades in a jurisdictional dispute are employed by a common employer, in the scientific furniture industry the employer is fighting for the right to use his own employees to accomplish the

work. If the employer is forced to use outside tradesmen who lack the necessary skills, tools, supervision and experience, quality and economy may suffer, with immediate consequences to trade reputation and profits. Accordingly, the employer's interest in the outcome of the dispute is most intense.

II.

IT IS UNFAIR TO FORCE AN EMPLOYER TO SUBMIT TO JOINT BOARD AWARDS.

The opinion of the Court of Appeals would require an employer to abide by a Joint Board award even though he has not agreed to do so. Many employers have refused to participate in or have withdrawn from the Joint Board because of highly questionable practices and awards.

In the scientific laboratory furniture industry, disputes have arisen over the installation of fume hood cabinets, which are fully enclosed areas at which a laboratory worker stands when dealing with toxic or noxious chemicals. Employers throughout the country uniformly assign the installation to their employees, who are carpenters. In 10(k) proceedings arising from claims to this work by sheet metal workers the NLRB has twice awarded the work to the carpenters in thorough, carefully reasoned decisions. *Local 408, SMWIA* (Metalab Equipment Co.), 49 NLRB 763, 57 LRRM 1388 (1964); *Local 299, SMWIA* (Metalab Equipment Co.) 173 NLRB No. 202, 70 LRRM 1011 (1968). Nevertheless, both before and after these NLRB decisions, the Sheet Metal Workers International Association has obtained dozens of awards of the identical work from the Joint Board. In making these awards the Joint Board has stated no reasons why the sheet metal trade is more appropriate. It is not unfair to suggest that this unbroken string of unsupported Joint Board decisions depends upon considerations other than the merits of the dispute.*

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* *See* Comment, *The Employer as a Necessary Party to Voluntary Settlement of Work Assignment Disputes Under Section 10(k) of the NLRA,* 38 U.Chi.L.Rev. 389, 401-402 (1971).

It would be unfortunate to require employers to submit to interference with their ordinary work assignments simply because an aggressive competing trade has the ability to extract favorable decisions from the Joint Board.

If an employer elects to participate in the Joint Board and agrees to abide by its decisions, he cannot reasonably complain about the ways of that tribunal. If the employer chooses to stay clear of the Joint Board, it is most unfair to impose its decisions upon him.

It can be anticipated that many employers will not acquiesce in Joint Board decisions. If a 10(l) injunction against a work stoppage is outstanding, will the NLRB then move to dissolve the injunction and throw the recalcitrant employer back to the wolves? The decision below, if sustained, will not promote industrial peace, as contemplated by the framers of the Taft-Hartley Act, but rather it will intensify the underground warfare that presently plagues the construction industry.

Conclusion

Scientific Apparatus Makers Association, *amicus curiae*, respectfully requests that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

ALBERT E. JENNER, JR.
EDWARD H. HATTON
CHESTER T. KAMIN
Attorneys for Scientific Apparatus Makers Association

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135 South LaSalle Street
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APPENDIX

APPENDIX

EXHIBIT A

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D.C. 20530

May 12, 1971

Chester T. Kamin, Esq.
135 South La Salle Street
Chicago, Illinois 60603

Re: NLRB v. Plasterers' Union Local 79, No. 1184, October Term, 1970
and
Texas State Tile and Terrazzo Company, Inc. v. Plasterers' Union Local 79, No. 1231, October Term, 1970

Dear Mr. Kamin,

In response to the request in your letter of May 10, I hereby consent to your filing a brief amicus curiae in the above-entitled case on behalf of the Scientific Apparatus Makers Association.

Very truly yours,

Erwin N. Griswold
Erwin N. Griswold
Solicitor General

EXHIBIT B

NOS. 1184 and 1231

IN THE
SUPREME COURT OF THE UNITED STATES

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79,

Respondent.

TEXAS STATE TILE AND TERRAZZO COMPANY, INC.,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79,

Respondent.

CONSENT TO FILING OF AMICUS CURIAE BRIEF

Texas State Tile and Terrazzo Company, Inc., and Tile Contractors Association of America, Inc., by their attorneys, hereby consent pursuant to Rule 42 of the Rules of the Supreme Court of the United States to the filing of a brief *amicus curiae* on behalf of Scientific Apparatus Makers Association.

Wayne S. Bishop
One of the Attorneys for Texas State Tile and Terrazzo Company, Inc., and Tile Contractors Association of America, Inc.

EXHIBIT C

NOS. 1184 and 1231

IN THE
SUPREME COURT OF THE UNITED STATES

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79,

Respondent.

TEXAS STATE TILE AND TERRAZZO COMPANY, INC.,

Petitioner,

vs.

PLASTERERS' UNION LOCAL 79,

Respondent.

CONSENT TO FILING OF AMICUS CURIAE BRIEF

Tile, Terrazzo and Marble Setters Local Union No. 20, Brick Layers, Masons, and Plasterers International Union, by its attorneys, hereby consents pursuant to Rule 42 of the Rules of the Supreme Court of the United States to the filing of a brief *amicus curiae* on behalf of Scientific Apparatus Makers Association.

Jerry D. Anker
One of the Attorneys for Tile, Terrazzo, and Marble Setters Local Union No. 20, Brick Layers, Masons, and Plasterers International Union

EXHIBIT D

LAW OFFICES
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May 12, 1971

Chester T. Kamin, Esq.
Jenner & Block
135 South LaSalle Street
Chicago, Illinois 60603

Re: NLRB v. Plasterers' Local 79
Nos. 1184 and 1231
Supreme Court of the United States

Dear Mr. Kamin:

This will acknowledge your letter of May 10 requesting the consent of our client, Plasterers' Local 79 to the filing of an *amicus* brief by the Scientific Apparatus Makers Association.

We have refused consent to several other groups seeking to file *amicus* briefs in this case, and we cannot consent to your request.

Very truly yours,

Donald J. Capuano
Donald J. Capuano

DJC:cm